

THE RIGHT TO ORGANISE AND CULTURAL RIGHTS ESSENTIAL TO COMMUNITY FOREST MANAGEMENT

Text prepared by Isaac Rojas, coordinator of the Forests and Biodiversity Program, Friends of the Earth International. December 2020.

INTRODUCTION

Essential rights to community forest management (CFM) are of great importance to Friends of the Earth International (FoEI). We believe that these rights are essential because without their incorporation into the legal system and their implementation, CFM can be affected and cannot be fully developed.

This is the third analysis we have written on the subject and complements the previous two. The first, “Essential Rights to Community Forest Management” provides political substance to the rights identified as essential. The second, “Community Forest Management: what support it has in international agreements” analyses how 17 international agreements deal with these rights.

Both documents provide two important tools for the defence of these essential rights to CFM: by knowing how they are supported at the international level, we have insight to lobby for their implementation at national level. For should a country have adhered to and ratified the specific agreement, its implementation is a state obligation. If it has not ratified it, there is a legal doctrine of human rights law that would provide arguments to pressure the authorities of a country for the implementation of those rights. We have provided these rights with political content – the product of debate and experience in different realities in different countries – so that we can advocate for content that is more beneficial to Indigenous Peoples, local communities and CFM

itself. This is because, in the end, legal issues have a lot to do with interpretation, and hence the importance of the political content we have created.

What this third document does is to take some of the rights we have identified that were not part of the analysis in the second document (because they are not so clearly protected in international conventions) and develop them with proposals for their advocacy. This way, we should cover all the rights identified in the first analysis.

It is important to repeat that the legal aspect is only one dimension of the struggle for rights and these are not confined within the legal sphere alone. The legal sphere can be a space of great importance but we must always remember that it is not everything and has its limitations. For example, a judge is a decision maker who may not know the context or importance of our claims very well; law is not always synonymous with justice; we may run the risk of demobilising and putting our future in the hands of a third party; If we do not succeed, it can have an impact on our struggles. As a result of this, it is necessary that the legal aspect be just one more element in a process of struggles and that before resorting to any legal body, we can give content to our struggles through communication and mobilisation, that we can think about what rights we are defending and why, and thus draw possible scenarios. The strategies of struggle and defence of rights must transcend the strictly legal and go to these instances once they have been understood and placed within larger strategies.

COMMUNITY ORGANISATION

Community organisation is an extremely important element because without organisation, many activities cannot be carried out and the community can stagnate and become just a space where people and nature coexist. Without organisation, there are no processes of struggle and vindication; there are no processes that promote the collective for the well-being of that collective; there can be no mobilisation that seeks permanently to improve the living conditions of that community. As far as the CFM is concerned, organisation is equally important because:

- the forest is a collective good and space,
- the practice involves an organised community to ensure success,
- the CFM cannot exist without an organised community,
- the essential rights related to CFM are collective and historical.

The community organisation may use some legal form or may be a de facto organisation. An organisation established under national law may have some advantages over a de facto organisation and the latter may also have some positive points over the former. This is an issue that varies according to contexts,

circumstances and political positions that vary from community to community. In some cases, opting for a legal figure assures the possibility of obtaining funds, carrying out administrative procedures, and being the holder of a legal certificate. Some disadvantages may be the need to periodically comply with the requirements and processes necessary to maintain the legal status in force or to use a figure that is not adapted to what is being sought or in some cases, that this legal figure implies the lack of knowledge of traditional forms of organisation which represents an imposition from the dominant society.

The fact of having an organisation – whether de facto or de jure – is guaranteed by the Human Right of Association which, according to Article 22 of the Universal Declaration of Human Rights, states the following:

1. *Everyone has the right to freedom of peaceful assembly and association.*
2. *No one shall be compelled to belong to an association.*

This right can also be found in the United Nations Declaration on the Rights of Peasants and Other Persons Working in Rural Areas.



Amelia Collins/Friends of the Earth International

9.1 Peasants and others working in rural areas have the right to form and join organisations, trade unions, cooperatives or any other organisation or association of their choice to protect their interests and to bargain collectively. Such organisations shall be independent and voluntary and shall not be subject to any form of interference, coercion or repression.

9.2 (...)

9.3 States shall take appropriate measures to encourage the establishment of peasant organisations and other organisations working in rural areas, such as trade unions, cooperatives or other organisations, in particular with a view to removing obstacles to their establishment.

Similarly, the United Nations Declaration on the Rights of Indigenous Peoples states:

Indigenous peoples have the right to maintain and strengthen their own political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

There are cases in which the State prohibits organisation, and it is usually in very specific cases because they are set up for purposes that threaten social coexistence: organisations to commit crimes, to promote discrimination and hatred, etc. With these exceptions, no State can go against the right of association.

In the case of community organisations related to the CFM, we identify that they must seek the full participation of the whole community, for which they must provide the necessary conditions; they must promote the participation of women and young people; decision-making must be the product of a collective process; there must be mechanisms for the resolution of differences. These are aspects that must be sought in every organisation and we know that at some points, some will comply with some aspects and not others. Community organisations, like all others, are sometimes more successful on some issues than others, but there must always be the necessary commitment and internal processes that guarantee the community itself that the organisation represents the whole community and that it

is part of the organisation. Thus, for example, achieving gender justice and fighting against patriarchy is an issue that needs to be addressed not only so that the organisation effectively represents the whole community, but also to move forward as a collective towards equity and justice. This task is not only an issue for community organisation but for the vast majority of organisations.

The right to organise, therefore, is a fundamental human right which, in the case of its relationship with CFM, can be defended by referring to the aforementioned agreements, but also, that from CFM without organisation, it cannot exist. In this way, any right that guarantees the full validity of CFM becomes a tool to defend the holder of CFM which is the organised community.

RESPECT FOR COMMUNITY CULTURE AND SPIRITUALITY

In the study “Community Forest Management: How it is supported by international agreements”, we said that “among the broad set of rights assessed in this report, this is one of the least defined and generally least supported by international agreements”. In the document “Essential rights to community forest management” we identified the following rights in relation to culture:

- respect, promotion and strengthening of community culture and spirituality which is related to cultural elements intimately linked to the territory and from which, for example, collective knowledge is built; the collective character of Indigenous Peoples’ and local community societies; the character of heritage that old generations leave to new generations in various social, cultural and agricultural practices such as CFM; the maintenance of traditional knowledge, including language, uses, customs and spirituality which are always in constant evolution.
- cultural rights such as recognition of the community’s own language, education in their language and in culturally appropriate ways, and spiritual rights (spirituality involves deep and complex understandings and is based on multiple values and in many cases, a spiritual connection to the territories.) This means that the use of the forest should be done with respect and preservation of nature, and not only in response to human needs or ambitions).¹

¹ Taken from Essential rights to community forest management, pages 5 and 11

Article 31 of UNDRIP states that Indigenous Peoples have the right to:

“maintain, control, protect and develop their cultural heritage, traditional knowledge, traditional cultural expressions and manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions”.

With respect to the right to practice and revitalise their cultural traditions and customs, UNDRIP further notes that:

*“This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological or historical sites, artefacts, designs, ceremonies, technologies, visual and performing arts and literature”.*²

While all these rights are the least developed at the international level, there is a clear link to territory. Thus, as long as we protect the territory, culture and spirituality will be protected and consequently, cultural rights can be more easily claimed.

For example, the Convention on Biological Diversity (CBD) has two articles that protect the cultural aspects of Indigenous Peoples and local communities. Article 8j states the following:

Each Contracting Party shall, as far as possible and as appropriate

- (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the*

equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

And Article 10c provides:

Each Contracting Party shall, as far as possible and as appropriate

- (c) protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with the requirements of conservation or sustainable use.*

Both articles deal with traditional knowledge in relation to the use of biological diversity. This use cannot be dissociated from the territory because that is where it takes place. In other words, traditional knowledge cannot be protected without protecting the territory where it is used.

The same can be said of many cultural practices: their relationship with forests and biological diversity is clear, and therefore their protection necessarily implies the protection of the territories where they are carried out, as well as the elements of biological diversity that are necessary for these cultural and spiritual practices to take place.

A similar provision can be found in article 20.2 of the UN Declaration on the Rights of Peasants and Others Working in Rural Areas:

States shall take appropriate measures to promote and protect the traditional knowledge, innovations and practices of peasants and others working in rural areas, including traditional systems of agriculture, pastoralism, forestry, fisheries, livestock and agro-ecology relevant to the conservation and sustainable use of biodiversity.

The special relationship that indigenous peoples have with their lands and territories is well known. This is stated in the outstanding Report of Mr. Martinez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, presented to the United Nations in 1986:

²Taken from Community Forest Management: what support it has in international agreements, page 40

Members of the women's group picking vegetables at the community agroecology and agro-forestry project, Sungai Buri, Sarawak, Indonesia



Amelia Collins/Friends of the Earth International

“It is essential that the special and deeply spiritual relationship of indigenous peoples with their lands be recognised as basic to their existence as such and to all their beliefs, customs, traditions and culture. For indigenous people, land is not merely an object of possession and production. The integral relationship of the spiritual life of indigenous peoples with Mother Earth, with their lands, has many profound implications”.

The document CBD/WG8J/11/5, CBD/SBSTTA/23/4 of 10 October 2019 reiterates this and also looks at other United Nations conventions on the same subject that can be used in the defence of culture in relation to territory:

“The idea of biocultural systems has grown through the “Convention concerning the Protection of the World Cultural and Natural Heritage” (hereinafter referred to as the “World Heritage Convention”) (UNESCO, 1972) and the momentum that emerged from that international agreement. The World Heritage Convention, from the outset, recognises the links between natural and cultural heritage. It is also one of the eight biodiversity-related conventions that are members of the Liaison Group of the Biodiversity-related Conventions.

Together with “mixed sites”, i.e. sites that meet the natural and cultural criteria, the World Heritage Convention also covers the concept of “cultural landscapes”, a category for inclusion on the World Heritage List since 1992. Defined as the combination of the work of nature and people, the concept of cultural heritage has led to a better recognition of the various ways in which people interact with their natural environment. Cultural landscapes often reflect specific techniques of sustainable land use, considering the characteristics and limits of the natural environment in which they are established, and a specific spiritual relationship with nature. The UNESCO recommendation on Historic Urban Landscape in 2011 also recognises the important interconnections between cultural heritage and the natural environment.

It is therefore the duty of the State to create the conditions for each people to express its spirituality freely and without any discriminatory burden”.³

Therefore, culture and spirituality and their relationship with CFM, although not always protected in explicit regulations, the direct and express relationship with the territory, provides a way to protect the rights

³Tapia, Angela; Peru: the right to spirituality at <https://www.servindi.org/actualidad/6373>

thereto. This relationship is also key in the post-2020 framework that the Convention on Biological Diversity is currently discussing.

The links between biological and cultural diversity have been identified by the International Union for Conservation of Nature (IUCN), as well as by the Convention on Biological Diversity and UNESCO, as one of the untapped potentials for new dynamics to achieve an ambitious post-2020 global biodiversity framework.

In view of the crises facing biodiversity, a more effective incorporation of biocultural heritage to address the drivers of biodiversity loss, as identified in the IPBES Global Assessment, is clearly desirable.

Nature conservation has sometimes been pursued separately from aspects of culture. This situation is illogical when we consider the importance of sustainable customary use, and more broadly local and traditional resource management, in maintaining biological diversity in many areas where nature is currently 'protected'.

In recognising this interaction, cultural rights must be recognised in order to create the conditions for a real

change in the system, which is necessary to stop the loss of biodiversity that leads to the loss of traditional knowledge and languages. Territory itself, it is clear, is once again central and therefore the implementation and respect of the rights of Indigenous Peoples and local communities are even more valuable.

CONCLUSION

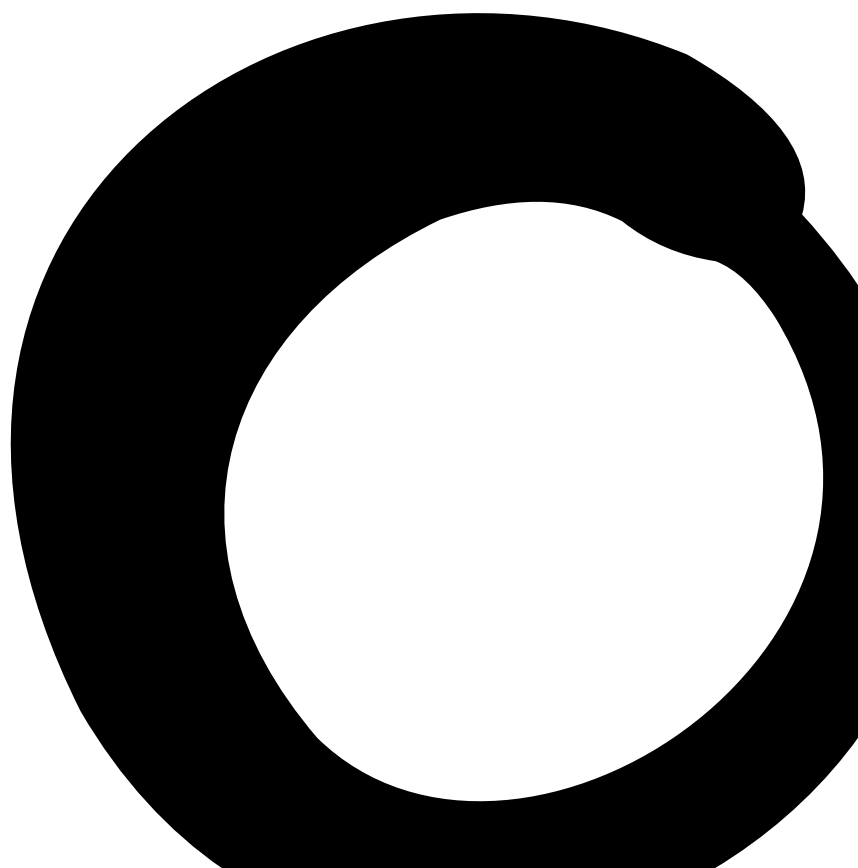
The defence of essential rights relating to CFM, and CFM itself, have an important space in international regulations (international agreements and conventions) for developing arguments to guarantee the full validity of CFM. As it has been evident from our analysis, the full validity and implementation of these rights is an extremely important aspect of the full development of CFM. Hence, it is important to get to know these rights and what the regulations say, and to exchange experiences on the defence of these rights and of CFM in order to develop more and better strategies to assure better living conditions for the entire population. CFM is a historical, collective and cultural practice that combats both the climate crisis and the loss, degradation and extinction of biodiversity. The Indigenous Peoples and local communities who are developing CFM deserve that these rights are not only fully implemented but also respected on a daily basis.



An Iban villager from Sungai Buri, Bakong, Miri, Sarawak looking over the oil palm plantation that has encroached on his community's customary territory

© Sahabat Alam Malaysia / Friends of the Earth Malaysia

THE RIGHT TO ORGANISE AND
CULTURAL RIGHTS ESSENTIAL TO
COMMUNITY FOREST MANAGEMENT



**Friends of
the Earth
International**

WWW.FOEI.ORG

FRIENDS OF THE EARTH INTERNATIONAL
INTERNATIONAL SECRETARIAT
P.O. BOX 19199, 1000 GD
AMSTERDAM THE NETHERLANDS

PHONE +31 (0) 206221369
WEB[AT]FOEI.ORG | TWITTER.COM/FOEINT
FACEBOOK.COM/FOEINT